

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY MARANO COMPANY

Plaintiff

v.

MS-GRAND BRIDGEVIEW, INC.,
an Illinois corporation, d/b/a
MELROSE FRESH MARKET,
PETER LIMPERIS, and MAKIS LIMPERIS

Defendants

Case No. 08CV4244
Judge Zagel
Magistrate Judge Brown

JACK TUCHTEN WHOLESALE PRODUCE, INC.

Intervening Plaintiff

v.

MS-GRAND BRIDGEVIEW, INC.,
an Illinois corporation, d/b/a
MELROSE FRESH MARKET,
PETER LIMPERIS, and MAKIS LIMPERIS

Defendants.

**AFFIDAVIT OF STEPHEN SERCK IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION ORDER**

Stephen Serck, being duly sworn, deposes and says:

1. I am the President of JAB Produce, Inc. ("JAB"), and make this Affidavit in support of Intervening Plaintiff's Motion for Preliminary Injunction Order.
2. I am an adult who, if called upon as a witness, would and could competently testify to all facts stated in this affidavit. The facts set forth in this

affidavit are within my personal knowledge.

3. JAB is a business located in Chicago, Illinois which bought and sold wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate produce. JAB is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. 499a *et seq.* (hereafter "PACA").

4. My responsibilities as President of JAB include supervising collection of the accounts receivable for JAB's sales of perishable agricultural commodities, including the account MS-Grand Bridgeview, Inc. d/b/a Melrose Fresh Market ("Melrose"). I have custody and control of the sales and accounts receivable records of JAB as they relate to Melrose, and am familiar with the manner in which those records were compiled.

5. Between May 12, 2008, and August 8, 2008, JAB entered into a series of transactions with Melrose, whereby JAB sold and delivered to Melrose, wholesale amounts of produce worth \$72,709.60. These commodities were grown, shipped and moved in or in anticipation of interstate commerce. An itemized statement of account is attached as Exhibit A.

6. With respect to each shipment, JAB sent an invoice to Melrose that contained the language required by 7 U.S.C. 499e(c)(4). Copies of a sampling of the unpaid invoices sent to Melrose, which are voluminous, are attached hereto as Exhibit B.

7. On July 28, 2008, Melrose submitted a check in the amount of \$18,523.85 returned for insufficient funds to JAB, a copy of which is attached as

Exhibit C. JAB incurred bank charges as a result of the NSF check.

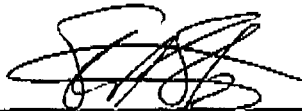
8. JAB has talked to Melrose's Accounts Payable Clerk, Mary, about the outstanding account of Melrose. Melrose has never disputed the amount due and owing to JAB but advised that Melrose is experiencing severe cash flow problems and cannot pay the balance due to JAB.

9. Defendants' failure, refusal and inability to pay, as well as their tender of a check returned for insufficient funds, indicates that defendants are failing to maintain sufficient assets in the statutory trust to pay Intervening Plaintiff and similarly situated creditors like JAB, and are dissipating trust assets.

10. The outstanding balance due and owing to JAB from Melrose is the principal amount of \$72,709.60, plus bank charges, contract interest, and reasonable attorneys fees and costs incurred. JAB intends to intervene in this action as a party plaintiff to protect its interests and enforce its PACA trust rights against defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2008.



Stephen Serck, President
JAB Produce, Inc.

EXHIBIT "A"

08/15/08

JAB Produce, Inc.
Accounts Receivable Detail

Page: 1

Customer: M0251, MELROSE FRESH MARKET

Phone#

Date	Ticket #	Code	Amount	Paid	Credit	Balance
08/14/08	NSF2237	DM	0.00	0.00	-18563.85	18563.85
05/12/08	682808	DI	882.10	882.00	0.00	0.10
05/21/08	684976	DI	447.50	447.50	160.00	-160.00
06/17/08	691089	DI	778.80	0.00	0.00	778.80
06/17/08	691091	DI	756.00	0.00	0.00	756.00
06/17/08	691167	DI	145.00	0.00	0.00	145.00
06/19/08	691619	DI	864.30	0.00	0.00	864.30
06/19/08	691624	DI	150.00	0.00	0.00	150.00
06/20/08	692101	DI	446.00	0.00	0.00	446.00
06/21/08	692305	DI	239.00	0.00	0.00	239.00
06/23/08	692483	DI	458.80	0.00	0.00	458.80
06/23/08	692489	DI	91.50	0.00	0.00	91.50
06/24/08	692824	DI	645.00	0.00	0.00	645.00
06/24/08	692828	DI	80.00	0.00	0.00	80.00
06/26/08	693271	DI	2426.30	0.00	0.00	2426.30
06/26/08	693368	DI	240.00	0.00	0.00	240.00
06/27/08	693746	DI	793.50	0.00	0.00	793.50
06/27/08	693748	DI	117.00	0.00	0.00	117.00
06/28/08	693890	DI	935.75	0.00	0.00	935.75
06/28/08	693904	DI	42.50	0.00	0.00	42.50
06/30/08	694126	DI	1365.00	0.00	0.00	1365.00
06/30/08	694134	DI	62.50	0.00	0.00	62.50
07/01/08	694402	DI	1527.50	0.00	0.00	1527.50
07/03/08	694917	DI	1255.35	0.00	0.00	1255.35
07/05/08	695193	DI	1437.50	0.00	130.40	1307.10
07/07/08	695490	DI	729.00	0.00	0.00	729.00
07/08/08	695748	DI	2970.00	0.00	0.00	2970.00
07/10/08	696281	DI	1882.50	0.00	0.00	1882.50
07/11/08	696637	DI	890.00	0.00	0.00	890.00
07/12/08	696793	DI	513.00	0.00	0.00	513.00
07/14/08	696983	DI	303.50	0.00	0.00	303.50
07/14/08	697105	DI	273.00	0.00	0.00	273.00
07/15/08	697242	DI	1296.00	0.00	0.00	1296.00
07/15/08	697260	DI	1900.00	0.00	0.00	1900.00
07/17/08	697838	DI	689.25	0.00	0.00	689.25
07/17/08	697844	DI	970.00	0.00	0.00	970.00
07/18/08	698262	DI	360.75	0.00	0.00	360.75
07/19/08	698376	DI	1266.25	0.00	0.00	1266.25
07/19/08	698377	DI	58.00	0.00	0.00	58.00
07/19/08	698378	DI	260.00	0.00	0.00	260.00
07/19/08	698391	DI	422.00	0.00	0.00	422.00
07/21/08	698627	DI	1099.25	0.00	0.00	1099.25
07/21/08	698645	DI	175.00	0.00	0.00	175.00
07/22/08	698930	DI	1222.00	0.00	0.00	1222.00
07/22/08	698934	DI	290.00	0.00	0.00	290.00
07/22/08	698937	DI	1404.00	0.00	0.00	1404.00
07/22/08	698959	DI	200.00	0.00	0.00	200.00
07/23/08	698935	DI	194.00	0.00	0.00	194.00
07/23/08	699251	DI	257.00	0.00	0.00	257.00
07/24/08	699402	DI	1520.75	0.00	12.50	1508.25
07/25/08	699764	DI	2261.00	0.00	0.00	2261.00
07/25/08	699833	DI	320.00	0.00	0.00	320.00
07/26/08	700016	DI	996.50	0.00	0.00	996.50

07/28/08	700274	DI	1692.50	0.00	0.00	1692.50

Continued...						

08/15/08

JAB Produce, Inc.
Accounts Receivable Detail

Page: 2

Customer: M0251, MELROSE FRESH MARKET

Phone#

Date	Ticket #	Code	Amount	Paid	Credit	Balance
07/28/08	700278	DI	305.00	0.00		
07/28/08	700279	DI	48.00	0.00	0.00	305.00
07/28/08	700280	DI	385.00	0.00	0.00	48.00
07/29/08	700509	DI	613.50	0.00	0.00	385.00
07/29/08	700513	DI	55.00	0.00	0.00	613.50
07/30/08	700757	DI	874.50	0.00	0.00	55.00
07/30/08	700759	DI	422.50	0.00	0.00	874.50
07/31/08	701000	DI	749.00	0.00	0.00	422.50
07/31/08	701002	DI	52.50	0.00	0.00	749.00
07/31/08	701004	DI	110.00	0.00	0.00	52.50
08/01/08	701008	DI	742.00	0.00	0.00	110.00
08/01/08	701372	DI	531.50	0.00	0.00	742.00
08/02/08	701498	DI	221.00	0.00	0.00	531.50
08/02/08	701500	DI	758.50	0.00	0.00	221.00
08/02/08	701533	DI	220.00	0.00	0.00	758.50
08/04/08	701789	DI	924.00	0.00	0.00	220.00
08/04/08	701801	DI	645.00	0.00	0.00	924.00
08/04/08	701811	DI	1717.50	0.00	0.00	645.00
08/06/08	702210	DI	401.50	0.00	0.00	1717.50
08/07/08	702305	DI	2271.00	0.00	0.00	401.50
08/07/08	702317	DI	108.00	0.00	35.00	2236.00
08/07/08	702320	DI	17.50	0.00	0.00	108.00
08/07/08	702374	DI	202.50	0.00	0.00	17.50
08/08/08	702577	DI	836.00	0.00	0.00	202.50
						836.00
Current	7 Days	14 Days	21 Days	Over 28	Total	
0.00	8287.50	7577.50	10936.75	45907.85	72709.60	

EXHIBIT "B"

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154**JAB PRODUCE, INC.**

08/15/08 (09:07:24) #2

Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

***** Duplicate Invoice *****

2	CS	Leek			
Topless			@22.50	=	45.00
1	CS	Endive			
Topless			@16.00	=	16.00
1	CS	Mustard Greens			
OH / DUTCH MAID			@11.50	=	11.50
1	CS	Kale Green			
CA / RATTO			@16.00	=	16.00
1	CS	Parsley Root 24ct.			
LITTLE BEAR			@45.00	=	45.00
7	CS	Green Onions			
Topless large			@12.50	=	87.50
2	CS	Beets Loose 50 lb.			
Little Bear			@17.00	=	34.00
1	CS	Watercress 24 ct.			
B & W			@16.30	=	16.30

Continued

***** Duplicate Invoice *****

2	CS	Leek			
Topless					17492 : òx
1	CS	Endive			
Topless					17492 : cr
1	CS	Mustard Greens			
OH / DUTCH MAID					17429 : òm
1	CS	Kale Green			
CA / RATTO					17472 : cr
1	CS	Parsley Root 24ct.			
LITTLE BEAR					17502 : cÅ
7	CS	Green Onions			
Topless large					17471 : òn
2	CS	Beets Loose 50 lb.			
Little Bear					17502 : cs
1	CS	Watercress 24 ct.			
B & W					17508 : ür

SPARKY

FOR RESALE ONLY

Payment terms are 10 days.
PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(a)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice. Buyer agrees to pay all costs of

WRITTEN BY

DELIVERED BY

TOTAL

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

***** Duplicate Invoice *****

2	CS	Lettuce, Red Leaf			
Snow Boy		@14.00	=	28.00	
2	CS	Parsley, Plain (Flat)			
Topless		@21.00	=	42.00	
1	CS	Dill - 60 Count			
CA / RATTO		@32.00	=	32.00	
3	CS	Spinach, Bunch			
Topless // Wood		@18.50	=	55.50	
2	SK	Turnips 25 lb. Medium			
CA / RATTO		@13.00	=	26.00	
5	CS	Mushrooms, 16 oz. Pkg.			
8/16 oz. Green Giant		@14.00	=	70.00	
5	CS	Mushrooms, 8oz. Overwrap			
8/16 oz. Green Giant		@12.00	=	60.00	
2	CS	Lettuce, Green Leaf			
Snow Boy		@14.00	=	28.00	

Continued

JAB PRODUCE, INC.08/15/08 (09:07:24) #2
Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:

***** Duplicate Invoice *****

2	CS	Lettuce, Red Leaf			
Snow Boy					17511 :cp
2	CS	Parsley, Plain (Flat)			
Topless					17492 :cw
1	CS	Dill - 60 Count			
CA / RATTO					17472 :cé
3	CS	Spinach, Bunch			
Topless // Wood					17492 :òt
2	SK	Turnips 25 lb. Medium			
CA / RATTO					17472 :co
5	CS	Mushrooms, 16 oz. Pkg.			
8/16 oz. Green Giant					17513 :cp
5	CS	Mushrooms, 8oz. Overwrap			
8/16 oz. Green Giant					17513 :cn
2	CS	Lettuce, Green Leaf			
Snow Boy					17511 :cp

SPARKY

FOR RESALE ONLY

Payment terms are 10 days.
PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice. Buyer agrees to pay all costs of TOTAL

WRITTEN BY

DELIVERED BY

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

***** Duplicate Invoice *****

2 CS MINT, BUNCHED
CA / RATT0 @13.00 = 26.005 BX Potatoes, YukonGold "A" BX
A-SZ YUKON BOX @28.00 = 140.00

778.80

JAB PRODUCE, INC.08/15/08 (09:07:24) #2
Invoice: 691089 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:

***** Duplicate Invoice *****

2 CS MINT, BUNCHED
CA / RATT017472 : co
5 BX Potatoes, YukonGold "A" BX
A-SZ YUKON BOX

17491 : c~

SPARKY

FOR RESALE ONLY

Payment terms are 10 days.
PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(a)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice. Buyer agrees to pay all costs of

WRITTEN BY

DELIVERED BY

TOTAL

JAB PRODUCE, INC.**"Top Quality Wholesale Produce"**2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 691091 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

***** Duplicate Invoice *****

108 CS Strawberry, Clamshell 1#
Naturipe Watsonville @7.00 = 756.00

756.00

JAB PRODUCE, INC.08/15/08 (09:07:28) #2
Invoice: 691091 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:

***** Duplicate Invoice *****

108 CS Strawberry, Clamshell 1#
Naturipe Watsonville

17496 :ci

Mike

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 510 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice. Buyer agrees to pay all costs of

WRITTEN BY**DELIVERED BY****TOTAL**

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 691167 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:**CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY**

***** Duplicate Invoice *****

10 CS Cabbage - Large Green
NEW JERSEY / CRATES @14.50 = 145.00

145.00

JAB PRODUCE, INC.08/15/08 (09:07:31) #1
Invoice: 691167 06/17/08
Customer: MELROSE FRESH MARKET
Ship to:

***** Duplicate Invoice *****

10 CS Cabbage - Large Green
NEW JERSEY / CRATES

17493 : òp

SPARKY

FOR RESALE ONLY

Payment terms are 10 days.
PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum). In the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of TOTAL

WRITTEN BY**DELIVERED BY**

EXHIBIT "C"

071000301
08/07/2008
6611659481

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

RETURN REASON-S
REFER TO MAKER

071000301 07/28/2008
0717418361

ms-Grand Bridgeview Inc.
DBA Melrose Fresh Market
10280 S. Harlem Ave.
Bridgeview, IL 60455

RETURN REASON - S NOT SUFFICIENT FUNDS		2237	
ms-Grand Bridgeview Inc. DBA Melrose Fresh Market GENERAL ACCOUNT 10280 S. HARLEM AVE. BRIDGEVIEW, IL 60455			
JAB PRODUCE CO INC		RETURN REASON - S REFER TO MAKER	
EIGHTEEN THOUSAND FIVE HUNDRED TWENTYTHREE		\$ 18,523.85	
STANDARD BANK			
FOR			
#002237# 0071909363# 5403874000# 0001852385#			

#002237#

0071909363#

5403874000#

#0001852385#